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No. 243

In the Supreme Court of the United States

OCTOBER TERM, 1960

IRVING SACHS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
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Petitioner, the president and one-third stockholder of a corporation, was convicted of filing fraudulent tax returns for the corporation and was fined $10,000. The corporation, upon the resolution of its stockholders, paid the fine. The Tax Court and the court of appeals (Pet. 7-11[1]) held that the corporation's payment of the fine resulted in taxable income to petitioner in the nature of a dividend. That decision is clearly correct. The fine was a personal liability imposed upon petitioner for his own culpable conduct. The corporation's payment discharged petitioner's

[1] The opinion as printed in the petition does not reflect a change made by the court after its original release. The change, though seemingly unimportant, is noted in the Appendix *infra*.

legal obligation and was thus constructively received by him. Realized gains not expressely excluded by statute are within the definition of income (*Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426), and on the facts here the payments were properly characterized as dividends. There is no conflict or other reason for further review. The petition should be denied.

Respectfully submitted.

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AUGUST 1960.

APPENDIX

United States Court of Appeals
For the Eighth Circuit

[In the final opinion of the court of appeals (277 F. 2d 879, 881-882), the following paragraph was substituted for the ninth paragraph of the opinion as printed in the petition (*i.e.*, the paragraph at Pet. 10-11 beginning "In reviewing * * *"):]

* * * * * *

We are required to review the decision of the Tax Court, "in the same manner and to the same extent" as decisions of the District Courts in civil actions tried before the Judge and without a jury. § 7482, Title 26, U.S.C.A. (I.R.C. 1954). Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C.A., provides that findings of fact by the trial court shall not be set aside "unless clearly erroneous." If the Tax Court's finding here is supported by substantial evidence upon the record as a whole, and is not against the clear weight of the evidence or induced by an erroneous view of the law, it cannot be disturbed upon appeal. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746, rehearing denied 333 U.S. 869, 68 S. Ct. 788, 92 L. Ed. 1147. See also *Krueger* v. *Commissioner of Internal Revenue*, 8 Cir., 269 F. 2d 184, 185, 186; *Marcella* v. *Commissioner of Internal Revenue*, 8 Cir., 222 F. 2d 878, 879; *Klamath*

Medical Service Bureau v. *Commissioner of Internal Revenue*, 9 Cir., 261 F. 2d 842, 847, certiorari denied 359 U.S. 966, 79 S. Ct. 877, 3 L. Ed. 2d 834, and compare *Crown Iron Works Co.* v. *Commissioner of Internal Revenue*, 8 Cir., 245 F. 2d 357, 358; *Longstaff* v. *Commissioner of Internal Revenue*, 5 Cir., 241 F. 2d 308.

In *Boehm* v. *Commissioner of Internal Revenue*, 326 U.S. 287, 290, 66 S. Ct. 120, 124, 90 L. Ed. 78, the Supreme Court stated:

> "* * * The circumstance that the facts in a particular case may be *stipulated or undisputed* does not make this issue any less factual in nature. The Tax Court is entitled to draw whatever inferences and conclusions it deems reasonable from such facts." Emphasis supplied.